

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Marcie Nolan, AICP, Acting Development Services Director

PREPARED BY: Daniel J. Stallone, Esq., Code Compliance Official

SUBJECT: Nuisance Abatement Options

AFFECTED DISTRICT: 4

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: Nuisance Abatement

REPORT IN BRIEF: The Code Compliance Division has had an ongoing code enforcement action against the Estate of Irving C. Losee at its ten (10) acre property located at 2175 SW 148 Avenue. This code case was initiated to abate numerous nuisance Australian pines which have been identified as imminently hazardous due to factors such as structural instability, disease, hurricane damage, fire hazards, etc., and their proximity to adjacent residential properties. For all such reasons, the special magistrate has ordered their removal. The Estate representatives claim that there are no available assets to finance the remedial action. Citizen complaints continue as they wish to have the hazardous nuisance conditions abated. There are several options available and each are explained in an attachment hereto.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: Yes

Has request been budgeted? No

If yes, expected cost:

Account Name:

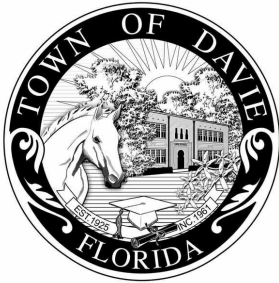
If no, amount needed: \$ 67,000 – \$200,000

What account will funds be appropriated from: Nuisance Abatement

Additional Comments: Nuisance Abatement does not have sufficient funds budgeted for this action.

RECOMMENDATION(S): Code Compliance Official recommends Option(s) 1, and 3.

Attachment(s): Losee Nuisance Abatement Report



DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE DIVISION

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MEMORANDUM

DATE: March 20, 2008

TO: Marcie Nolan, AICP, Acting Development Services Director

FROM: Daniel J. Stallone, Esq., Code Compliance Official

RE: Losee Nuisance Abatement Enforcement Options

ENFORCEMENT OPTIONS:

1. The Code Compliance Division may continue to initiate regular noncompliance hearings which apply fines that equal \$250/violation/day until the respondent complies with all violations; to date, this enforcement method has resulted in more than \$16,000 in fines and liens recorded against the Losee property;

COST: Nominal fees based upon the costs of a special magistrate and town staff needed to start a code compliance case.

2. Code Compliance may initiate further enforcement action by filing an additional Notice of Violation (NOV) which may subject the respondent to the potential of increased code enforcement fines of \$1000/violation/day;

COST: Nominal fees based upon the costs of a special magistrate and town staff needed to start a code compliance case.

3. Initiate litigation under either of two separate legal causes of action: a) Town seeks to enjoin the Losee nuisance; or, b) Town requests that the court issue a declaratory judgment whereby it may order that the prevailing conditions at the Losee property are such that they endanger the public health, safety and welfare; further, ask the court to order the Losee defendant to take timely and appropriate action to eliminate the nuisance and insure that public safety hazards are corrected within a reasonable and specific time (recommend 30-60 days) period;

COST: Town litigation expenses associated with the action of the town attorney and staff; respondent may be liable for all costs associated with the removal of Australian pines and attorney fees and court costs shall be borne by the defendant; Losee Estate, if the Town is successful in the litigation..

4. Initiate litigation whereby the court would be asked to declare that the unsafe and hazardous conditions on the Losee property are such that the court should allow Davie to enter upon the private property and be allowed to remedy all unsafe conditions (remove Australian pines) and thereafter, record all costs incurred by the Town as a lien upon the real and personal property of the defendant Losee Estate; subsequently, the Town may seek to foreclose upon the property for the reimbursement of all costs incurred in mitigating and eliminating the Losee property hazards;

COST: The cost of removal for an Australian pine (60'-100' height) is estimated at up to \$1,000 per tree; there have been sixty-seven (67) trees identified as nuisances in the current code case on one of the borders of the property, and there may be many more which may require removal, therefore the estimated costs of this option may be as high as \$200,000 or higher, in addition to all costs associated with litigation such as attorney fees and court costs.

5. Enter into a stipulated agreement with the Losee Estate whereby the Town shall be granted the voluntary approval to enter upon the Losee property and undertake actions to mitigate the hazardous conditions; all such actions would be at the Town's expense during this initial stage, and such costs shall be filed and recorded as a lien equal in amount against the Losee Estate property; further, the stipulated agreement shall require that the Town shall be granted a voluntary dispersal of funds to recover all costs previously incurred at the time the property is sold and Estate assets may be derived; and always shall the Town retain an option to foreclose upon the Losee Estate property and acquire a judgment in land ownership or funds for repayment of Town costs as the court would deem appropriate.

COST: The Town's expenses under this option would include the costs associated with the removal of the Australian pines (60'-100' height) which are estimated at up to \$1,000 per tree; since there have been sixty-seven (67) trees identified as nuisances in the current code case on only one of the borders of the property, and there may be many more which

require removal, the estimated costs of this option may be as high as \$200,000; the costs of litigation such as town attorney fees and court costs would be eliminated.

RECOMMENDATIONS:

The Code Compliance Official recommends the use of Option 1 and / or Option 3.

- Option 1 is probably the most cost-effective as it applies the Town's existing code enforcement procedures without expensive outlay of town funds but that cost savings is faced by a more protracted and less immediate time schedule for achieving compliance. The cumulative effect of fines through noncompliance hearings may result in the town's ability to foreclose on the lien after the fine amount has grown to a sufficient threshold sum. At a point approximately six (6) months from this time, there would be sufficient funds in lien amounts to potentially undertake the remediation of the sixty-seven (67) identified nuisance Australian pines.
- Option 3 is a favorable option if the town chooses to seek compliance through litigation by injunctive relief or declaratory judgment action. To seek a judicial finding with an order compelling remedial action on the part of the Losee respondent with their funding of such action would save significant cost expenditures by the town. The issuance of a judicial order would hold the Losee respondent liable for contempt by failing to meet their judicially-ordered compliance conditions.